

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE BROOKLYN INSTITUTE OF ARTS
AND SCIENCES,

Plaintiff,

-against-

THE CITY OF NEW YORK and RUDOLPH
W. GIULIANI individually and in
his official capacity as mayor of
the City of New York,

Defendants.

ORIGINAL

DEPOSITION OF JOSEPH J. LHOTA

New York, New York

Thursday, October 7, 1999

Reported by:

AMY E. SIKORA, CRR, CSR, RPR

Job No. 100157


ESQUIRETM
DEPOSITION SERVICES

216 East 45th Street, 8th Floor
New York, NY 10017-3304
212.687.8010 • 800.662.3287
Fax 212.557.5972

October 7, 1999

10:20 a.m.

DEPOSITION of JOSEPH J. LHOTA,
taken by Plaintiff, pursuant to agreement,
held at the offices of Cahill Gordon &
Reindel, 80 Pine Street, New York, New
York, before Amy E. Sikora, CRR, CSR, RPR,
a Certified Realtime Reporter, Certified
Shorthand Reporter, Registered
Professional Reporter, and Notary Public
within and for the State of New York.

1

2 A P P E A R A N C E S:

3 CAHILL GORDON & REINDEL

4 Attorneys for Plaintiff

5 80 Pine Street

6 New York, New York 10005

7 BY: SUSAN BUCKLEY, ESQ.

8 FLOYD ABRAMS, ESQ.

9

10 DANIEL S. CONNOLLY, ESQ.

11 Attorneys for City of New York and

12 Rudolph W. Giuliani

13 New York City Law Department

14 Office of the Corporation Counsel

15 100 Church Street

16 New York, New York 10007

17

18 ALSO PRESENT:

19 Matthew A. Leish, Cahill, Gordon & Reindel

20

21

22

23

24

25

1

2

3

IT IS HEREBY STIPULATED AND AGREED, by
and between the attorneys for the respective
parties herein, that filing and sealing be and the
same are hereby waived.

7

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of the
question, shall be reserved to the time
of the trial.

11

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed and sworn
to before any officer authorized to administer an
oath, with the same force and effect as if signed
and sworn to before the officer before whom the
within deposition was taken.

17

18

19

20

21

22

23

24

25

1

2 J O S E P H J. L H O T A,

3 called as a witness, having been first duly

4 sworn by the Notary Public (Amy E. Sikora),

5 was examined and testified as follows:

6 EXAMINATION

7 BY MS. BUCKLEY:

8 Q. Would you state your name for the
9 record, please.

10 A. My name is Joseph Lhota.

11 Q. And what is your present position,
12 Mr. Lhota?13 A. I'm deputy mayor for operations of
14 the City of New York.15 Q. What are your responsibilities as
16 deputy mayor for operations?17 A. The deputy mayor for operations
18 position essentially functions as a chief
19 operating officer of the city. I report to the
20 mayor of New York. Numerous different agencies
21 of the city government report to me.22 There are other deputy mayors who
23 have certain very specific responsibilities.
24 For example, there is a deputy mayor for
25 economic development that makes him responsible

Lhota

2 for economic development issues. There is a
3 deputy mayor for community affairs, which does
4 community affairs issues, and there is a deputy
5 mayor for education and social services and in
6 her capacity she deals with all of those issues.

7 I have all of the other agencies
8 which are probably too numerous to mention but
9 approximately 80 to 85 percent of the city
10 agencies report to me. In addition to that, all
11 of the agencies that don't report to me I'm
12 responsible for their budgets. So I have
13 financial responsibility towards all the
14 agencies and their budgets.

15 There are some agencies that report
16 directly to the mayor, police department as an
17 example. I also have responsibility for their
18 budget as well. And in the event that the mayor
19 is absent from the five boroughs, I, under the
20 temporary line of succession, fulfill his role.

21 Q. So when the mayor is outside the
22 city, if I understand you correctly, you are the
23 acting mayor of the City of New York?

24 A. I think that's the correct title,
25 acting mayor.

1 Lhota

2 Q. Have you ever been deposed before,
3 Mr. Lhota?

4 A. I have.

5 Q. How many times?

6 A. Three.

7 Q. So you're fairly familiar with the
8 deposition process?

9 A. Somewhat familiar. I've never been
10 deposed while I've been with the city
11 government, only in the private sector.

12 Q. Let me just tell you, if I ask you
13 a question today which you don't understand, if
14 I'm confusing, please simply tell me so and I
15 will try to rephrase it. Will you agree to do
16 that?

17 A. Yes.

18 Q. I'll also be asking you questions
19 today about whether you have personal knowledge
20 of certain matters. Do you have an
21 understanding of what that term means?

22 A. I believe I do, but if you'd like
23 to enlighten me that would be great.

24 Q. Let me articulate what I mean when
25 I ask if you have personal knowledge.

1 Lhota

2 (Interruption.)

3 Q. Deputy Mayor, when I ask you if you
4 have personal knowledge of facts or events, what
5 I'm asking is whether you've observed them
6 directly or you have participated in them
7 directly. If you know them as a matter of
8 personal knowledge rather than hearsay knowledge
9 or something like that.

10 A. Okay.

11 Q. Mr. Lhota, I understand you're a
12 graduate of Georgetown University; is that
13 correct?

14 A. That is correct.

15 Q. And what was your major in college?

16 A. Accounting.

17 Q. And you went on to get a master's
18 in business administration from Harvard; is that
19 correct?

20 A. That is correct.

21 Q. And what was your specialty at
22 Harvard?

23 A. There isn't one.

24 Q. Do you have any --

25 A. For anybody there.

1 Lhota

2 Q. Do you have any specialized
3 knowledge or expertise in the field of law?

4 A. None.

5 Q. Do you have any specialized
6 knowledge or expertise in the field of art?

7 A. Only as an observer.

8 Q. You have no educational training or
9 academic background?

10 A. I have no educational training or
11 academic background in art other than art
12 history.

13 Q. What kind of background do you have
14 in art history?

15 A. I -- what is the word when you
16 attend a class but you don't use a grade.

17 MR. CONNOLLY: Audit.

18 A. I audited an art history class at
19 Georgetown.

20 Q. That would be in college?

21 A. In college and during college.

22 Q. And was that a one-semester course?

23 A. Barely a semester. I didn't have
24 to attend all of them.

25 Q. And I take it you would not

1 Lhota

2 maintain that you're an expert in art history as
3 a result of attending that one class?

4 A. I am not an expert in art history,
5 I will so stipulate.

6 Q. Let me just, for the court
7 reporter's benefit, let you know that we have to
8 try to speak separately. Wait till I finish my
9 question so that she can record us both down.

10 Do you have any specialized
11 knowledge or expertise in the field of child
12 psychology, Deputy Mayor?

13 A. No.

14 Q. Do you have any specialized
15 knowledge or expertise in the field of theology?

16 A. Yes.

17 Q. Can you describe that for the
18 record?

19 A. I attended parochial school; I
20 attended a Jesuit university. I contemplated at
21 one point entering the seminary. My knowledge
22 is not academic, it's more in the way of
23 practice, in the practical end.

24 Q. But I take it you wouldn't consider
25 yourself an expert in the field of religion as a

1 Lhota

2 field of study?

3 A. Not in an academic environment.

4 Q. Before you became deputy mayor of
5 the City of New York, I understand you were in
6 the financial industry, if you will; is that
7 correct?

8 A. Prior to my employment in the
9 Giuliani administration I was an investment
10 banker.

11 Q. And with what firm did you work?

12 A. Immediately prior to coming to work
13 in the Giuliani administration I worked at CS
14 First Boston. Prior to that I worked at
15 PaineWebber.

16 Q. Has your work experience generally
17 been in the finance field?

18 A. Yes.

19 Q. Are you now or have you ever been a
20 member of a board of directors of any company?

21 MR. CONNOLLY: Can you ask it --

22 MS. BUCKLEY: Sure.

23 Q. Are you presently a member of any
24 board of directors?

25 A. Yes. I am.

1 Lhota

2 Q. On what boards do you serve?

3 A. I have -- at the present time I
4 serve on boards only in an ex officio capacity,
5 by virtue of my government position. I have
6 severed all relationships as related to things
7 prior to that. So at the current time I'm a
8 member of the board -- there are numerous boards
9 I serve on as ex officio: The New York City
10 Health and Hospitals Corporation, the New York
11 City Housing Development Corporation are two
12 notable ones.

13 Q. Does the sanitation department
14 report to you?

15 A. Absolutely.

16 Q. Does the fire department report to
17 you?

18 A. Budgetarily, the fire commissioner
19 reports to the mayor. Though I meet with the
20 fire commissioner frequently on operational
21 issues.

22 MS. BUCKLEY: I guess we will mark
23 as Plaintiff's Exhibit 1 the affidavit of
24 Mr. Lhota which was delivered to our
25 office last evening.

1 Lhota

2 (Plaintiff's Exhibit 1, Lhota
3 affidavit, marked for identification, as
4 of this date.)

5 Q. Mr. Lhota, have you been able to
6 take a look at what we've marked as Plaintiff's
7 Exhibit 1?

8 A. Yes.

9 Q. Can you describe what that is for
10 the record?

11 A. It's a statement of mine which lays
12 out various issues regarding the lawsuit between
13 the museum and the city.

14 MR. CONNOLLY: I would just ask
15 that the record reflect that it is an
16 unsigned draft of that statement,
17 Plaintiff's Exhibit 1.

18 MS. BUCKLEY: Right. We've been
19 advised by counsel for the City this
20 morning that the affidavit has as of yet
21 not been completely finalized. It has not
22 been signed by Deputy Mayor Lhota as of
23 this moment.

24 Q. But I'd like to ask you, Deputy
25 Mayor Lhota, if all of the statements in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Lhota

draft are true, to the best of your knowledge?

A. Yes.

Q. And did you understand that when you execute the affidavit in minutes or maybe hours that it will constitute sworn testimony in this case?

A. I'm aware of that, yes.

Q. And are you prepared to swear to the accuracy of all of the information in this draft as well?

MR. CONNOLLY: Well, let me just --

A. Subject to the one change that I made, yes. We'll come over that.

MS. BUCKLEY: Did you want to make a statement?

MR. CONNOLLY: That's all right.

THE WITNESS: Sorry, I won't do that.

Q. So subject to the one change that you believe has been made in the affidavit between last night's draft and what we're hoping to expect by fax, you're prepared to swear that the information set forth in what we have marked as Exhibit 1 is true; is that correct?

1 Lhota

2 A. Yes.

3 Q. Mr. Lhota, would you describe for
4 me the process by which you prepared this
5 affidavit.

6 A. I was interviewed by the law
7 department -- the New York City Law Department.
8 They drafted this statement for me. I have
9 marked it up and as soon as my markups are
10 completely typed in, it is my intent to sign it.

11 MS. BUCKLEY: Let's go off the
12 record.

13 (Discussion off the record.)

14 Q. Now, Deputy Mayor Lhota, there are
15 a number of documents referred to in your
16 affidavit. Did you review and become familiar
17 with those documents?

18 A. I have reviewed them. Familiar
19 would be too strong a word.

20 Q. Let's take some examples. Did you
21 review the lease that is referred to in
22 paragraph 3 of the affidavit?

23 A. Yes.

24 Q. When did you first see that lease,
25 Deputy Mayor?

1

Lhota

2

3

4

5

A. I do not know the date. It was the date in which the mayor made his initial public statement regarding the Brooklyn Museum. Later in the day.

6

7

8

9

10

11

12

13

14

MS. BUCKLEY: Dan, do you have any objection, during the next break I would like to ask the court reporter to mark as Exhibit 1A through 1J the exhibits to the affidavit of Deputy Mayor Lhota which are referred to in the affidavit so that we all have that complete set of the affidavit in one place. Do you have any objection to that?

15

16

17

MR. CONNOLLY: No, no objection.

18

19

20

21

22

23

24

25

MS. BUCKLEY: So they will be marked as 1A through 1J.

And I would now like to mark as Exhibit 2 a copy of a stipulation in this action dated -- it's dated October 4, 1999. And I understand it as being executed this morning by the City of New York. Is that your understanding, Dan?

MR. CONNOLLY: It is.

(Plaintiff's Exhibit 2, copy of

1 Lhota

2 stipulation in this action, dated
3 October 4, 1999, marked for
4 identification, as of this date.)

5 Q. I'd like you to turn your
6 attention, if you would, Mr. Lhota, to the page
7 right after the signature page on Exhibit 2
8 which has the heading "Q & A, September 22,
9 1999, RWG."

10 A. I'm sorry, it was two behind?

11 Q. One. Right after the signature
12 page.

13 A. Right. 9/24/99.

14 Q. September 22, 1999. And underneath
15 the notation September 22, 1999 it says "RWG."
16 Do you know what that stands for?

17 A. Those are the mayor's initials.

18 Q. Why don't you take a moment just to
19 read the paragraph that is reflected on that
20 page. Have you completed your review?

21 A. I have.

22 Q. In reviewing that page of what we
23 have marked as Exhibit 2, does that refresh your
24 recollection in any way as to the first day that
25 you first saw the lease between the City of New

1 Lhota

2 York and the Brooklyn Museum of Art?

3 A. I believe the mayor made -- this
4 appears to be the initial statement the mayor
5 made, yes.

6 Q. So if I understand you correctly,
7 on the afternoon of September 22 you first
8 became familiar with the lease between the city
9 and the museum?

10 A. Midday.

11 Q. How did you get the lease?

12 A. It was faxed to me. My initial
13 copy was faxed to me. And unfortunately in my
14 role as deputy mayor I bark to people with great
15 frequency, get me this or get me that, and
16 that's part of my job as it appears. So other
17 than that, I don't remember and recall who faxed
18 it to me. I have a staff, my chief of staff and
19 others.

20 Q. Why did you ask for it?

21 A. Because it was my recollection in
22 my prior capacity as budget director that all of
23 the museums that operate under the cultural
24 institution group of the City of New York have
25 leases and contracts, of which there are

1 Lhota

2 specific things that they must do in their
3 capacity as a cultural institution group. That
4 was my recollection when I looked at how the
5 cultural institutions function in the city when
6 I was the budget director.

7 I wanted to look at the specific
8 lease for the Brooklyn Museum to understand
9 exactly what the requirements were and what they
10 agreed to do as a museum in the City of New York
11 to receive funding and to use the city building.

12 Q. Were you present at the question
13 and answer session from which the quote that is
14 of September 22nd, which we've been referring
15 to --

16 A. Yes.

17 Q. -- comes?

18 A. Yes.

19 Q. Where did that Q and A session take
20 place?

21 A. My recollection, it was in city
22 hall, second floor, committee of the whole.

23 Q. And about what time?

24 A. I'm sorry, I don't know.

25 Q. Did you have any discussions with

1 Lhota

2 Mayor Giuliani after the Q and A session about
3 what steps should be taken concerning the
4 Brooklyn Museum at that time?

5 A. No.

6 Q. Did you have any discussions with
7 Mayor Giuliani --

8 A. Can you ask the question one more
9 time.

10 MS. BUCKLEY: Could you read back
11 the question, please.

12 (Record read.)

13 A. Are we talking about that day or
14 subsequent days? There is no time frame, I'm
15 sorry.

16 Q. I'm sorry, I'll clarify it. Did
17 you have any discussion that day with Mayor
18 Giuliani?

19 A. That evening.

20 Q. Can you summarize for me the
21 substance of that discussion?

22 A. I informed the mayor of the lease
23 and the contract with the city and I was -- I
24 had asked to receive a copy of the legislation.
25 I had not received it yet because I believe

1 Lhota

2 there was reference in the lease to state law
3 and I had not been able to get a copy of the
4 statute. But I informed the mayor that my
5 nonlegal reading of it, it was my belief that
6 the museum was in violation of the lease
7 regarding their admissions -- failure to follow
8 the admissions policy as laid out in the lease.

9 Q. Was it your idea to go find the
10 lease or someone else's idea?

11 A. It was -- I believe it was my idea,
12 though I generally share credit with everybody
13 on everything that I do. But I do remember
14 saying that I wanted to get a copy of the lease.

15 Q. You referred in your prior answer,
16 Mr. Lhota, to legislation or you may have used
17 the word statutes, concerning the status of the
18 Brooklyn Museum of Art. And I believe you said
19 that you had asked to receive that material as
20 well; is that correct?

21 A. That's correct.

22 Q. And did you ever receive that
23 material?

24 A. Subsequent to that day, may have
25 been the next day or the day after. That I do

1 Lhota

2 not recall, the exact timing of receipt of that.
3 But I did note that when I looked at the
4 legislation the person who drafted the lease
5 mirror imaged -- the words were verbatim between
6 the lease and the legislation. That's all I
7 looked at in the legislation, was that portion
8 of the creation.

9 Q. I'd like to refer you to pages 2
10 and 3 of your affidavit, this is paragraph 3,
11 where you're discussing the documents that
12 govern the relationship between the city and the
13 museum. Do you see that, Mr. Lhota?

14 A. I do.

15 Q. And on the top of page 3 you recite
16 a portion of chapter 172 of the laws of 1890,
17 the state law that you describe as incorporating
18 the Brooklyn Museum; do you see that?

19 A. I do.

20 Q. And then you purport to set forth
21 the purpose of the museum as articulated in that
22 law; is that correct?

23 A. I see that.

24 Q. And that's section 3 which reads,
25 begins, "The museums and libraries of said

1 Lhota

2 corporation shall be open and free to the
3 public," et cetera?

4 A. Uh-huh.

5 Q. Is it your view that that paragraph
6 fairly sets forth the purpose of the Brooklyn
7 Museum from the statute?

8 A. I'm not sure I understand the
9 question.

10 Q. Let me rephrase it. As I
11 understand it, you are articulating here your
12 view of what the purpose of the Brooklyn Museum
13 is as defined by the state law which
14 incorporated it; is that fair?

15 A. That's not fair.

16 Q. Why don't you tell me what you view
17 of section 3 to be.

18 A. The statutorily required admissions
19 policy for the museum.

20 Q. Did you review the entire charter,
21 this entire statute, I should say, in preparing
22 this affidavit?

23 A. I did not.

24 Q. You did not. Would you agree that
25 this paragraph, paragraph 3 of your affidavit,

1 Lhota

2 which goes over from 2 to 3, is your effort to
3 explain what you viewed to be the purposes of
4 the Brooklyn Museum of Art?

5 A. I do not.

6 Q. What do you understand it to be?

7 A. It is the various documents that
8 govern the specific relationship between the
9 city and the museum and the requirement that the
10 museum remain free and open. And as part of
11 the -- for me, the core of the contract, lower
12 case C, contract or agreement between the city
13 and this museum regarding what they do and what
14 they must continue to do to be a cultural
15 institution, a member of the cultural
16 institution group, or another way to put it, to
17 receive public funds and to use a
18 government-owned building.

19 MS. BUCKLEY: Let's mark as
20 Plaintiff's Exhibit 3 a copy of
21 Chapter 172 of the laws of 1890.

22 (Plaintiff's Exhibit 3, copy of
23 Chapter 172 of the laws of 1890, marked
24 for identification, as of this date.)

25 Q. While I'm getting that out,

1 Lhota

2 Mr. Lhota, did you give any thought to attaching
3 these various laws to your affidavit?

4 A. No. I didn't. Have not.

5 Q. Is there any reason you didn't
6 attach them?

7 A. I have not read them fully so I'm
8 not sure I'd consider attaching something I
9 hadn't read.

10 Q. I direct your attention to
11 section 2, Chapter 172 of the laws of 1890..
12 Could you read that.

13 A. Out loud?

14 Q. Sure.

15 A. Sure. Section 2: "The purposes of
16 said corporation shall be the establishment and
17 maintenance of museums and libraries of art and
18 science, the encouragement of the study of the
19 arts and sciences and their application to the
20 practical wants of man, and the advancement of
21 knowledge in science and art, and in general to
22 provide the means for popular instruction and
23 enjoyment through its collections, libraries and
24 lectures."

25 Q. Having read that, Deputy Mayor

1 Lhota

2 Lhota, do you think that paragraph fairly
3 reflects the purposes for which the Brooklyn
4 Museum has been chartered?

5 A. Does it fairly reflect. It's just
6 a statement of statute. Just reading the law.

7 Q. You'd agree it's the statement of
8 statutory purpose, would you?

9 A. It's just a reading of the law.

10 Q. Okay. Do you know whether this
11 statute is still in effect, Deputy Mayor Lhota?

12 A. I don't know that for a fact.

13 Q. Do you know whether this section of
14 the statute is still in effect?

15 A. I do not know that. I have no
16 personal knowledge.

17 Q. You testified earlier, Mr. Lhota,
18 that you received a copy of the lease between
19 the Brooklyn Museum and the City of Brooklyn
20 sometime in the afternoon of September 22nd; is
21 that right?

22 A. Midday.

23 Q. Midday. And I think you also
24 mentioned that you had a conversation with the
25 mayor about the lease on the evening of that

1 Lhota

2 day; is that right?

3 A. That is correct.

4 Q. Other than what you've already told
5 us, that you described the lease to him, can you
6 remember any other details of that conversation?

7 MR. CONNOLLY: As relating to this
8 subject?

9 MS. BUCKLEY: Correct.

10 A. My recollection is that I
11 thought -- my recollection is that I informed
12 the mayor that my reading of the lease and the
13 contract put in jeopardy the museum's ability to
14 continue to function as the Brooklyn Museum of
15 Art and that I had requested the law department
16 to do a legal analysis of what I had found.

17 Q. And you were focusing on the
18 admissions policies at that time; is that
19 correct?

20 A. Correct.

21 Q. Can you describe for the record
22 what you thought you had found in the lease that
23 suggested to you that there was a question about
24 the performance by the Brooklyn Museum?

25 A. Based on prior knowledge of the

1 Lhota

2 museums that are part of the cultural

3 institution group, that they must provide open

4 admissions as part of the agreement that we have

5 for them to use a city-owned building and that

6 if they do not then they need to get the

7 permission, and I believe they're different for

8 different cultural institutions, but as a

9 minimum they have to get the permission of the

10 mayor.

11 And I -- based on that, I had
12 thought that I advised the mayor at the time
13 that that's when I thought there was a problem
14 here; that they may have in fact, by taking an
15 action wherein they had not specifically
16 requested permission from the mayor, and now as
17 I find out from reading the law, the commission,
18 I'm not specifically sure which commission, and
19 since it wasn't specifically requested, I felt
20 that they were in violation of the statute, the
21 contract -- not the statute because I didn't
22 receive it. The contract and the lease and that
23 we may be in a situation where by virtue of that
24 act the museum board of directors were in a
25 position that they were forfeiting the right to

1 Lhota

2 use the building.

3 Q. Now, the act that the Brooklyn
4 Museum took to which you're referring is the
5 initial decision to restrict those under 17 from
6 attending the Sensation exhibit unless
7 accompanied by an adult; is that right?

8 A. That is not right.

9 Q. Please correct me.

10 A. The admissions policy requires that
11 it be open to the public and free of charge. I
12 don't distinguish between the age restriction
13 and the price being charged. In fact, to be
14 honest with you, I would put more emphasis on
15 the price because I believe, and I may be
16 incorrect in this, because I believe the
17 statutes say before they talk about -- they need
18 to be free.

19 And that is at the core of the
20 agreement and contract that we have with all of
21 the museums that use government-owned buildings,
22 that they must be free. And if they're not,
23 they need to have the permission of the mayor,
24 whoever that is at the time, to charge admission
25 for any specific exhibit.

1

Lhota

2

Q. So it is now your position that

3

because a fee is being charged to see the

4

Sensation exhibition that the charging of the

5

fee is a violation of some agreement between the

6

museum and the city?

7

A. My answer to that is no, not now,

8

then.

9

Q. Okay. What has changed between now

10

and then to change your answer?

11

A. My answer hasn't changed.

12

Q. Please explain to me the

13

distinction you're drawing.

14

A. Your question said my position now

15

is that the admissions price is the reason --

16

you can read your question. My position on the

17

day I read the lease, on the day I read the

18

contract, was the cost of attending this event

19

which would be charged. There would be a charge

20

to the public to enter this exhibit, that became

21

to me the most significant offense of the museum

22

in violating its agreement and its contract with

23

the City of New York. Its lease and its

24

contract with the City of New York.

25

Q. Did you relay that advice to Mayor

1 Lhota

2 Giuliani?

3 A. Yes. I did.

4 Q. And that would have occurred on the
5 evening of September 22nd; is that right?

6 A. That's my recollection.

7 Q. Have you reviewed the leases and
8 contracts of any other member of the cultural
9 institutions group?

10 A. Not since this event has happened.
11 I did while I was budget director.

12 Q. I'm going to direct your attention
13 to page 4, paragraph 5 of your affidavit, Deputy
14 Mayor. The first sentence reads, "Although a
15 typical diverse exhibit may occasionally contain
16 among its displays artwork of a controversial or
17 mature nature, 'Sensation' has been promoted by
18 the museum in an unprecedented fashion to
19 exploit its controversial nature."

20 Deputy Mayor, did I read that
21 correctly?

22 A. You did.

23 Q. To what are you referring when you
24 use the phrase "a typical diverse exhibit"?

25 A. I'll be very specific in my answer,

1 Lhota

2 and allow me to think of others.

3 Q. Sure.

4 A. Museums that I have been to have
5 exhibits that are consistent. I'm going to
6 break it down into different categories:
7 Multiple artists that have all done watercolor
8 paintings about sunsets. I wouldn't necessarily
9 say that's a diverse exhibit. May be diverse in
10 regard to the painters involved but it's not
11 diverse in content.

12 Other exhibits, the other side,
13 would be numerous different painters with
14 numerous different types of things that either
15 may be an era based, medieval, renaissance,
16 statues, paintings, different things like that.
17 My phrase, a typical diverse exhibit is in the
18 second category that I discussed. Numerous
19 different artists and in this case from specific
20 time period, young British artists, to be very
21 specific.

22 Q. Have you visited the Brooklyn
23 Museum?

24 A. I have on many occasions.

25 Q. And you've toured the works in the

1 Lhota

2 museum there on many occasions?

3 A. I have.

4 Q. By the way, have you seen the
5 Sensation exhibit, Deputy Mayor Lhota?

6 A. On the day I met Mr. Abrams we
7 walked past the exhibit following a board
8 meeting.

9 Q. How much of the exhibit did you
10 see?

11 A. Not very much.

12 Q. Can you name any of the works that
13 you saw?

14 A. I cannot.

15 Q. There are 90 pieces in the
16 exhibition, as I believe you know. Can you
17 estimate how many of the works of the 90 you
18 saw?

19 A. In all honesty, I walked past, I
20 didn't look at. And I think it was a hallway in
21 which I was. I wasn't even -- you know, the
22 museums are in a cluster of large rooms and some
23 small rooms. It was off in the distance. I
24 didn't see it. I was more interested in leaving
25 the building and talking to the press.

1 Lhota

2 Q. So if I understand your answer, you
3 didn't actually enter the Sensation exhibit?

4 A. I don't believe I entered the
5 Sensation as I was being escorted from the
6 museum.

7 Q. And who was with you at the time
8 you walked past --

9 A. Michael Hess, Corporation Counsel.

10 Q. -- the Sensation exhibit?

11 A. I'm sorry.

12 Q. That's okay. Up until today have
13 you viewed the sensation exhibition, Deputy
14 Mayor Lhota?

15 A. No.

16 Q. In reading your affidavit, Deputy
17 Mayor Lhota, you seem to have the view, and
18 correct me if I'm wrong, that this particular
19 exhibition is inappropriate in light of the
20 statutory purposes of the Brooklyn Museum; is
21 that a fair characterization?

22 MR. CONNOLLY: Could you repeat
23 that.

24 MS. BUCKLEY: Could you read it
25 back, please.

1 Lhota

2 (Record read.)

3 A. I'll agree to that.

4 Q. Is it your view that the Brooklyn
5 Museum can never display a controversial or
6 mature work?

7 A. No.

8 Q. Why?

9 A. Could you elaborate?

10 MR. CONNOLLY: I object to form.

11 Q. Well, you just, I think, testified
12 that it's not your view that the museum is
13 precluded from displaying a controversial or
14 mature work; is that right?

15 A. That's correct.

16 Q. What is the distinction between
17 your view that they're permitted to display such
18 works but they're not permitted to display this
19 work, this exhibition?

20 A. The -- my -- my argument about why
21 they're not permitted for this exhibition is a
22 function of a couple of things, not in any
23 priority order: One, failure to follow the
24 admissions policy which has I think two
25 components to it. The first component being

1 Lhota

2 restricting age, which at the time had not been
3 lifted, subsequently has been at the board
4 meeting. But age as well as charging a fee
5 without getting permission of the executive of
6 the city and a commission -- the mayor of the
7 city and the commission involved. That is issue
8 number one.

9 Issue number two is that the nature
10 of this exhibit, based on further on in
11 paragraph 5 I talk about the advertising insert
12 which I think highlights part of the marketing
13 strategy of the museum, in promoting the fact
14 that this -- there was a health warning for
15 those who have heart conditions and various
16 other things. That when you accept public
17 dollars in a government-owned building you have
18 a right -- goes back to Plato, I believe, maybe
19 Aristotle, I may be corrected on this later, but
20 there is a belief that for every right there is
21 a responsibility.

22 And that goes to the core of my
23 belief that part of this exhibit did the
24 following: It desecrated Christian faith; it
25 glorified a child murder by using fingerprints

1 Lhota

2 or handprints of children.

3 And finally -- and finally it had
4 numerous different pieces which I could say are
5 only inhumane to animals. A government -- any
6 organization that receives the right for
7 government funding does not also -- also has a
8 responsibility not to violate what I consider
9 the freedom of religion, which also includes not
10 desecrating someone's religion. That also goes
11 to the heart of my argument that the museum has
12 forfeited its right to -- the Brooklyn Museum as
13 we know it today has forfeited its right to
14 operate in the museum.

15 One would argue, as I'm sure you
16 and Mr. Abrams would or will, that there is also
17 in the same First Amendment that gives freedom
18 of religion, also gives freedom of expression.
19 I believe there is an inherent conflict in the
20 Constitution, not surprisingly, immediately
21 following the freedom of religion you find
22 freedom of expression in the First Amendment;
23 that there is an inherent conflict between the
24 two and that you cannot -- you cannot have one
25 at the expense of the other.

1 Lhota

2 There needs to be some way to deal
3 with this. We have said, we, the
4 administration, have said over and over again
5 that if you want to -- as the mayor did in the
6 statement that you asked me to read on this very
7 first day when he went public with his concern
8 about this issue, you want to do this in the
9 privacy of your home, you want to do this in a
10 private art gallery, go right ahead. But you
11 cannot accept public funding for something that
12 desecrates someone's religion.

13 That is a long answer to a very
14 simple question as to what I believe it was --
15 what were my feelings after reading this and
16 what conclusions did I come to.

17 MS. BUCKLEY: Move to strike the
18 answer on the grounds that it's
19 nonresponsive.

20 Q. Deputy Mayor Lhota --

21 MR. CONNOLLY: Just so the record's
22 clear, I object to the striking of that
23 answer.

24 MS. BUCKLEY: That's fine.

25 Q. I had asked you, Deputy Mayor

1 Lhota

2 Lhota, and I believe we had established that you
3 are not claiming that the Brooklyn Museum can
4 never show a work of a controversial or mature
5 nature; is that correct?

6 A. I agreed to that before. I think
7 we may need to define what is a controversial
8 and mature nature. Because what is
9 controversial and mature to some may not be
10 controversial and mature to another.

11 Q. Well, what would you consider to be
12 a work of a mature nature?

13 A. The answer to my question is going
14 to be very specific. I have an eight-year-old
15 daughter that passes the smell test. Would I
16 want my eight-year-old daughter to see that work
17 of art. If the answer to the question were no,
18 I would say that piece of work were of a mature
19 nature.

20 For example, I would not want my
21 daughter to see a naked man, a statue or a
22 caricature or a painting. I would not let my
23 daughter see someone -- see a bullet hole in
24 someone's head, specifically a piece that's in
25 the museum. That is mature because I believe

1 Lhota

2 you need a framework, mental architecture to
3 understand what you're looking at so that you
4 don't go home at night and have nightmares.
5 Because children, if you don't have that mental
6 architecture and understand what that is, it
7 could bother you and bother you in a way that I
8 think could be detrimental. That puts in a
9 mature category when people observing it cannot
10 observe it in a way that allows them to continue
11 functioning in a normal capacity.

12 Q. You mentioned in your answer that
13 you believe a depiction of a naked man may be
14 mature; is that right?

15 A. I did.

16 Q. If the Brooklyn Museum were lucky
17 enough to secure the rights to exhibit
18 Michelangelo's David, would that be
19 inappropriate for the museum?

20 A. It would not be inappropriate for
21 the museum. It would be inappropriate for my
22 daughter to see.

23 Q. But the museum could exhibit it
24 without fear of losing its lease?

25 A. I believe so. If they charged to

1 Lhota

2 see it without permission of the mayor, they
3 could jeopardize their opportunity to continue
4 their lease.

5 Q. Deputy Mayor Lhota, you're aware,
6 are you not, that the city has commenced an
7 ejectment action against the Brooklyn Museum in
8 Supreme Court in King's County, are you not?

9 A. I'm aware.

10 Q. What is the remedy that the city is
11 seeking in that action?

12 A. I believe it's the ejectment of the
13 board. I have not fully read that, whatever
14 statements have been provided by the city, so
15 I'm in an unfortunate situation to not give you
16 a whole lot of details. I do know that the City
17 of New York did file ejectment, a new word form,
18 when I first heard it, action. And that is
19 probably -- I spent most of my time asking what
20 is the derivation of this word ejectment.

21 MS. BUCKLEY: Let's mark as
22 Plaintiff's Exhibit 4 a copy of the
23 complaint in the state court action by the
24 city against the Brooklyn Museum of Art.

25 (Plaintiff's Exhibit 4, complaint

1 Lhota

2 in the state court action by the city
3 against the Brooklyn Museum of Art, marked
4 for identification, as of this date.)

5 Q. You've been handed Exhibit 4,
6 Mr. Lhota. Do you recognize this as the
7 complaint between the City of New York and the
8 Brooklyn Institute of Arts and Sciences which
9 does business as the Brooklyn Museum?

10 A. Having read the top portion of this
11 page, that's exactly what it says.

12 MS. BUCKLEY: Counsel, will you
13 stipulate that this is a copy of the
14 complaint in the action?

15 MR. CONNOLLY: Yes.

16 Q. Why don't you turn to page 7 of the
17 complaint, Deputy Mayor, if you will. Which
18 recites at the bottom the city's demands in this
19 case. And read those four demands to yourself.

20 A. Uh-huh.

21 Q. You'll see that the second demand
22 that the plaintiff city demands, judgment 3,
23 "The institute deliver possession of the
24 premises and the building thereon to the city."
25 Did I read that correctly, Deputy Mayor Lhota?

1 Lhota

2 A. Yes.

3 Q. Are you aware, Deputy Mayor Lhota,
4 that if the city were to be successful in its
5 action against the Brooklyn Museum that all of
6 the art in the museum would leave the borough of
7 Brooklyn?

8 A. Not necessarily. I am aware that
9 it would not be in -- my answer is not
10 necessarily.

11 Q. Can you explain what you mean by
12 "not necessarily"?

13 A. It's a hypothetical. When the city
14 is successful in this process, where the artwork
15 goes subject to the dissolution of that
16 corporation that houses it, its assets are
17 disbursed. They may in fact still stay in Kings
18 County, they may not.

19 Q. Are you aware, Deputy Mayor Lhota,
20 that the art is the property of the museum
21 itself?

22 A. I am aware of it.

23 Q. And are you aware that if the
24 museum lease is terminated, the museum and its
25 art may leave and go elsewhere?

1 Lhota

2 A. I am aware that it would go to the
3 successes or assigns to this corporate entity
4 that would be ejected from the building. I am
5 aware of that.

6 Q. That isn't my question, Deputy
7 Mayor Lhota. The Brooklyn Institute of Arts and
8 Sciences is a corporation, is it not?

9 A. Yes.

10 Q. And it owns all of the art which is
11 presently on the premises of the building of the
12 Brooklyn Museum of Art, are you aware of that?

13 A. That's a false statement.

14 Q. How is it false?

15 A. They do not own all of the art that
16 is there. There is some on loan that's owned by
17 other people, other corporate entities and other
18 individuals.

19 Q. Correct. Aside from the art that
20 is on loan from other individuals or corporate
21 entities, are you aware that the art objects
22 within the building of the Brooklyn Museum are
23 owned by the corporation, the Brooklyn Institute
24 of Arts and Sciences?

25 A. I am aware.

1 Lhota

2 Q. And are you aware that if that
3 corporation is ejected from the building it can
4 remove its property and go elsewhere?

5 A. I am aware of that. I would like
6 to say that "it can" I think should be changed
7 to it will have to take its artwork and move it
8 elsewhere.

9 Q. And it could move it to Los
10 Angeles, couldn't it?

11 A. A board member on the telephone
12 actually asked the question could it be acquired
13 by the Gettys, the Getty museum, which I believe
14 is in Southern California. That issue was
15 brought up at the board meeting and I believe
16 that the chairman of the board at that board
17 meeting said, yes, that is true. I agree with
18 the answer that the board member gave and my
19 answer to your question is yes.

20 Q. Deputy Mayor Lhota, going back to
21 your affidavit which we've marked as Plaintiff's
22 Exhibit 1, on page 4, paragraph 4, you speak of
23 the "shifting policies that have been
24 articulated concerning attendance by children."
25 To what are you referring there, Deputy Mayor

1 Lhota

2 Lhota?

3 A. Prior to the board meeting that I
4 attended, there was a policy, a policy that
5 children under 17 were either to be excluded or
6 in the company of an adult, I'm not sure of the
7 exact language. At the board meeting that -- a
8 resolution was put forward and voted by an
9 overwhelming majority of the board to reverse
10 that policy, therefore shifting, using the word
11 in paragraph 4, the policies regarding
12 attendance by children. They went from one
13 position to another position, just the term for
14 it.

15 Q. Was there any ambiguity at the
16 board meeting, Deputy Mayor Lhota, that the
17 board had voted to rescind the parental
18 accompaniment requirement for the Sensation
19 exhibition?

20 A. Yes. I believe at that board
21 meeting I did not listen close enough because I
22 did not have a copy of the resolution in front
23 of me that was voted on, that I voted no on.
24 What I heard and what the resolution actually
25 was, were two different things. My recollection

1 Lhota

2 from that meeting, my personal knowledge from
3 that meeting, was that they were not what I now
4 know to be the case, that children are now
5 allowed in. I would have sworn on a bible when
6 I left that room that children would only be
7 allowed in accompanied by an adult or a
8 guardian.

9 A letter was sent by Mr. Abrams to
10 Mr. Hess after I had made reference to that to a
11 reporter or someone, Mr. Abrams found out and he
12 corrected that for me. And I appreciate that.
13 I'm sorry, it was a hearing problem as opposed
14 to an actual -- I think as you give me documents
15 to read it's a simpler thing for me to look at
16 and concentrate.

17 It was, by the way -- it was, by
18 the way, the very first meeting of the board
19 that I have ever attended where a resolution
20 that was typed and only read by one person, was
21 not given to members of the board to look at and
22 read, which caused the problem that I had.

23 Q. You said that the board voted on
24 the resolution as it was read and that you voted
25 against it; is that right?

1 Lhota

2 A. That's correct.

3 Q. Anybody join you in your dissent?

4 A. On that vote, no. As I've read
5 subsequently it was about 30 to one. I voted
6 negative. I was the one. There were other
7 votes at that meeting. My recollection is in
8 this particular case I voted no.

9 Q. Continuing with your affidavit,
10 Mr. Lhota, I'm on page 5 -- actually, it's
11 paragraph 5 which goes over from pages 4 to 5.
12 You're talking about, generally speaking, the
13 marketing of the Sensation exhibition; is that
14 right?

15 A. Yes.

16 Q. You talk about a recorded message
17 in paragraph 5, referring, quote, suggestively
18 to topics such as sex, violence, et cetera.
19 What recorded message are you referring to?

20 A. Michael Hess came to my office at
21 city hall, dialed a number, and we listened to a
22 recording regarding this. I presumed that it
23 was the recording -- I presume, though I cannot
24 factually state it to be true, that it is the
25 phone message of what you hear when you dial

1 Lhota

2 1-887-Shark-Bite. However, I did not dial the
3 phone and I did not have the number. So, I
4 mean, I have no personal knowledge of what that
5 was, but I did listen to a recording regarding
6 the exhibit and it was a prerecorded
7 announcement.

8 Q. Later on in that paragraph,
9 Mr. Lhota, you say, you're talking about the
10 museum set as its primary purpose with respect
11 to this exhibit the goal of gaining public and
12 media notice by shocking or even nauseating
13 large portions of the general public. How do
14 you know what the museum's primary purpose in
15 exhibiting this exhibit is?

16 A. As a graduate of the Harvard
17 Business School, and having taken numerous
18 courses in marketing, it's my professional
19 opinion that the intent of the advertising was
20 to do as I stated in my statement. I have no
21 knowledge of what was in the mind of anyone at
22 the Brooklyn Museum when they developed or hired
23 someone to develop this marketing strategy. But
24 my analysis of this marketing strategy is what's
25 outlined here in this statement.

1 Lhota

2 Q. And you have no knowledge of what
3 was in the mind of the Brooklyn Museum in
4 deciding to mount this exhibition, do you?

5 A. I have never known what's in
6 anyone's mind I have ever met in my entire life.
7 I would never ever agree to say that I did.

8 Q. So you cannot really testify as to
9 what the museum's purpose was in mounting this
10 exhibition?

11 MR. CONNOLLY: I object to that
12 form.

13 A. No. I believe I can --

14 Q. You can answer.

15 A. I believe I can, in my professional
16 judgment gained while I was a student at the
17 Harvard Business School, I can render my opinion
18 as to what I believe the purpose of a marketing
19 and advertising campaign is.

20 Q. Have you ever talked to people at
21 the Brooklyn Museum as to the purpose of their
22 advertising campaign?

23 A. I had a brief conversation with
24 Robert Rubin, the chairman of the board.

25 Q. Did you ever talk to anyone at the

1 Lhota

2 Brooklyn Museum involved in the advertising for
3 the Sensation exhibition?

4 A. Other than talk to the chairman of
5 the board, no.

6 Q. Paragraph 7 of your affidavit,
7 Mr. Lhota.

8 (Discussion off the record.)

9 Q. You say, "A review of the
10 exhibition's content indicates that it includes
11 a highly unusual concentration of displays that
12 unquestionably will be highly offensive and/or
13 troubling to significant portions of the city's
14 population." Did you review the catalog for the
15 Sensation exhibition, Deputy Mayor Lhota?

16 A. Yes.

17 Q. And is that how you came to select
18 the exhibits you attached to your affidavit
19 which include works from the exhibition?

20 A. Yes.

21 Q. You literally sit and thumb through
22 it to identify works that you viewed to be
23 offensive?

24 A. Not all of the works that I believe
25 are offensive, but some of them.

1 Lhota

2 Q. You have attached a number of works
3 to your affidavit. Let me see if I can
4 summarize them for you. If you'll turn to
5 page 10 of your affidavit, paragraphs 15 through
6 17, you detail a number of works that you view
7 as inappropriate. Do you see that?

8 A. I do see that.

9 Q. And in selecting the works that you
10 deemed to be inappropriate, how did you go about
11 doing that?

12 A. I asked myself the following
13 question: One, do they desecrate anyone's
14 religion. If the answer is yes I would put it
15 here. I could possibly put it here.

16 The second question is: Would I
17 like my eight-year-old daughter to see this work
18 of art. If the answer was yes, it was given
19 consideration to be included in the affidavit.

20 And the third question that I asked
21 was would anyone who believes in animal rights
22 be offended. And I would put that in the
23 statement, though I have excluded those.
24 Excluded them here. It's a question that I
25 asked because in my capacity as deputy mayor for

1 Lhota

2 operations I have received an inordinate number
3 of constituent concerns regarding animal abuse
4 for many years, and I have become highly aware
5 that there is a significant portion of the
6 community in New York that is concerned about
7 this. It's something I've become aware of since
8 I've become deputy mayor. I had no idea that
9 people loved animals as much as they do.

10 So those are the questions that I
11 asked, although I did not include any of the
12 things on this list that I felt that people were
13 a member of PETA, P-E-T-A, would they be
14 offended by that because I would be concerned
15 about that.

16 MR. CONNOLLY: In his answer with
17 respect to his eight-year-old daughter, I
18 think he misspoke. Just clarify that.
19 Would I like my eight-year-old daughter;
20 if the answer was yes, then I would
21 include it.

22 MR. ABRAMS: Why don't we have the
23 witness repeat it.

24 THE WITNESS: Sure.

25 A. If it was a work in the exhibit,

1 Lhota

2 would I like my daughter to see it. If the
3 answer was yes -- excuse me, if the answer was
4 no, then I would consider it as something to
5 include in this statement.

6 MS. BUCKLEY: We can take a
7 two-minute break for coffee.

8 (Recess taken.)

9 BY MS. BUCKLEY:

10 Q. I believe before we took the short
11 break we were correcting the deposition
12 transcript to make clear that you had described
13 the criteria. Let me just repeat them back to
14 you so that the record is clear. I believe you
15 said that in selecting the works that are
16 described in your affidavit as inappropriate for
17 exhibition at the Brooklyn Museum, you looked
18 first to see whether any of the works desecrated
19 religion; is that correct?

20 A. That's correct.

21 Q. And then you looked second to see
22 whether any of the works were inappropriate for
23 viewing by your eight-year-old daughter; is that
24 correct?

25 A. That's correct.

1 Lhota

2 Q. And then you also considered
3 whether the works inappropriately handled or
4 depicted animals; is that correct?

5 A. That's correct.

6 Q. Now, I note here, Deputy Mayor
7 Lhota, that you did not include any of the
8 animal works in your list of exhibits. Can you
9 explain why?

10 A. There is a reference on the bottom
11 of page 4 to the dead shark of the exhibit.
12 That's the only place where I bring up this
13 issue. I thought to answer your question I
14 ought to be complete on what the three-pronged
15 test was that I went through in using this here.
16 Out of a sense of timing, and I didn't think it
17 would be overly -- it's an issue for me, I don't
18 think it's overly relevant here for this
19 statement or whatever it's called.

20 Q. Well, am I to take from that that
21 you do not believe that the animal works in the
22 exhibit are inappropriate for exhibition?

23 MR. CONNOLLY: Can you --

24 A. Can you put that in the
25 affirmative. A double negative.

1 Lhota

2 Q. I'll rephrase the question. After
3 applying your three criteria, did you come to
4 the view that the animal works were
5 inappropriate for inclusion in the exhibition?

6 A. I believe that certain of the works
7 that are shown here are inappropriate for the
8 exhibition.

9 Q. Do you believe that the shark is
10 inappropriate for display at this exhibition?

11 A. Unfortunately, yes, because it's
12 the only thing I've seen in the entire book that
13 I don't think is sensational. And I think the
14 shark is inconsistent with the title of the
15 show. I say that because those are my true
16 feelings. There are other works that I think
17 are inappropriate for the show. I think the
18 shark is an interesting item.

19 Q. So just so that I'm clear, because
20 I think we might have gotten a double negative
21 in there, are you of the view that the shark is
22 appropriate for exhibition at the Brooklyn
23 Museum?

24 A. I think a shark is appropriate at
25 the Brooklyn Museum. The answer to my question

1 Lhota

2 was I think that it is inconsistent with the
3 title of the show because I think the shark bite
4 itself is not sensational. It is probably the
5 least sensational thing that I saw in the book
6 that described the exhibit. Having experience
7 with sharks, I don't find them sensational,
8 nor -- and having swam with them, I don't find
9 them dangerous. As dangerous as others. So
10 it's not sensational. And it's a purely
11 personal point of view.

12 Q. I'm going to hand you, Deputy Mayor
13 Lhota, a copy of a catalog entitled "Young
14 British Artists From the Saatchi Collection,
15 Sensation." And I'll discuss with counsel
16 during a break whether it's appropriate to mark
17 the entire thing as an exhibit. But for
18 purposes of this discussion I'd like to show you
19 page 93, which depicts a photograph of a work
20 entitled "The Physical Impossibility of Death in
21 the Mind of Someone Living." I think if I'm
22 going to question you about it, Deputy Mayor
23 Lhota, we probably should mark it as an exhibit
24 and we can get copies for counsel for the City
25 of New York. So let's mark it as Plaintiff's

1 Lhota

2 Exhibit 5.

3 (Plaintiff's Exhibit 5, copy of
4 catalog entitled Young British Artists
5 From the Saatchi Collection, Sensation,
6 marked for identification, as of this
7 date.)

8 MR. CONNOLLY: What are we marking,
9 the page or the entire book?

10 MS. BUCKLEY: We're marking the
11 entire catalog as Exhibit 5.

12 Q. Now, just so I understand your
13 testimony, Deputy Mayor Lhota, that work on
14 page --

15 A. 93.

16 Q. On page 93 of the catalog, is it
17 your view that it is all right for the Brooklyn
18 Museum of Art to display this work in the
19 Sensation exhibition?

20 A. Yes.

21 Q. Is it your view that it's
22 appropriate for the Brooklyn Museum of Art to
23 display this work in its exhibition?

24 A. Yes.

25 Q. Is the Metropolitan Museum of Art a

1 Lhota

2 member of the cultural institutions group?

3 A. Yes.

4 Q. What is the cultural institutions
5 group?

6 A. The -- there are a number of
7 cultural institutions in the city whose
8 buildings are owned by the City of New York and
9 who operate similar to the Brooklyn Museum, a
10 government-owned building who in addition also
11 receive operating subsidies from the city. I
12 don't know the exact number, unfortunately. But
13 I do know that the Metropolitan Museum on Fifth
14 Avenue in Central Park is a member of that
15 group.

16 Q. I'd like you to assume that the
17 Metropolitan Museum of Art has the same lease
18 with the city as does the Brooklyn Museum of
19 Art, the same contract with the city as does the
20 Brooklyn Museum of Art, and the same statutes
21 creating it as does the Brooklyn Museum of Art.
22 Would you assume that for me?

23 A. I will.

24 MR. CONNOLLY: Without any position
25 on whether or not that's true?

1 Lhota

2 MS. BUCKLEY: Correct.

3 MR. CONNOLLY: Just a hypothetical
4 assumption.

5 MS. BUCKLEY: I'm asking him to
6 just assume that for me.

7 Q. And I want you to assume that the
8 Metropolitan Museum of Art is presently
9 considering conducting an exhibition of
10 contemporary art next fall. And I want you to
11 assume that the Metropolitan Museum of Art is
12 concerned about some of the appropriateness of
13 some of the works that are contained in their
14 planned exhibition. Will you assume that, too?

15 A. I will.

16 Q. To whom should the Metropolitan
17 Museum of Art turn under their assumptions to
18 find out whether in the view of the city the
19 works are appropriate for exhibition or not?

20 A. They should initially discuss with
21 the board what concerns they have to gauge a
22 sense of sensibility. Anyone on the board of
23 directors concerned about the same thing the
24 curators are, the people who are hired by the
25 board are concerned about. Have that debate,

1 Lhota

2 come to a conclusion, and determine what should
3 be incorporated in there or not.

4 The observer ex officio member for
5 the mayor, since the mayor does not attend
6 these, though by virtue of being cultural
7 institution group he is a member, the observer
8 should provide some information to city hall, if
9 it is their sense that there is something in
10 this exhibit that would offend or violate
11 someone's religion or very hard-held beliefs.
12 Then -- I'll leave it at that.

13 Q. And after city hall is advised of
14 such issues, what would happen next?

15 MR. CONNOLLY: I object to the form
16 of that question.

17 MS. BUCKLEY: All right.

18 Q. I'd like you to assume all of the
19 facts that we've already discussed, same lease,
20 same contract, same statutes.

21 A. Uh-huh.

22 Q. I want you to assume, as I told you
23 before --

24 MR. CONNOLLY: Can we pause for one
25 moment, I'm sorry.

1 Lhota

2 (Telephone interruption.)

3 (Recess taken.)

4 Q. I want you to assume that the
5 Metropolitan Museum of Art is considering an
6 exhibition of contemporary work. I want you to
7 assume they're concerned about the
8 appropriateness of some of the works, in light
9 of their obligations under their lease or their
10 statute. You've already told us that the first
11 thing they should do is raise these matters with
12 the board. The second thing they should do is
13 to notify city hall.

14 A. No. I didn't.

15 Q. All right.

16 A. The member -- the ex officio member
17 who's representing the mayor, the nonvoting ex
18 officio member, should notify city hall.

19 Q. And who at city hall would have the
20 ultimate responsibility for making the
21 determination as to whether the work was
22 appropriate or not for exhibition?

23 A. I think no one at city hall would
24 make -- make that type of representation. I
25 would, in my capacity as deputy mayor, say that

1 Lhota

2 if this -- if I can take this hypothetical the
3 next step, if this -- if the Metropolitan Museum
4 of Art was going to desecrate someone's religion
5 and that item was brought to my attention, I
6 would call Phillipe de Montebello, the director
7 of the museum, and sit down with him and say,
8 Phillipe, you have to be respectful of what I
9 believe are First Amendment rights for those
10 people who would be offended, whose religion is
11 being offended by the nature of this artwork.
12 It would be much better off if you did not do
13 this.

14 And I would try to use my
15 abilities, verbal abilities, to persuade him not
16 to do that, by basically saying that if you're
17 offending any portion of the city, you should
18 not do that in a publicly-owned building, you
19 ought to do that in a privately-owned building.

20 Q. And taking the hypothetical a step
21 further. Let's assume that Mr. de Montebello
22 disagreed with you, Deputy Mayor Lhota, as to
23 whether the work desecrated someone's religion
24 and proceeded to make plans to open the
25 exhibition, who at the city would have the final

1 Lhota

2 decision-making authority to determine whether
3 the work was inappropriate or not?

4 MR. CONNOLLY: Just so I'm clear
5 for the record, we're also assuming as
6 part of this hypothetical the exact same
7 statutory, contractual and lease
8 arrangements as exhibit at BMA?

9 MS. BUCKLEY: Absolutely.

10 A. I think at some point the
11 Metropolitan Museum would follow the practices
12 that the Met has always followed of sending a
13 letter to the mayor and the cultural affairs
14 department which talks about this exhibit.

15 And I'm going to presume for this
16 hypothetical that it was going to be an exhibit
17 which charged a certain amount of money, not
18 voluntary contribution that is required at the
19 Met, and whether there is a restriction on
20 admission to age or not, that they would ask
21 permission for that. And that would be the
22 normal course in which they would go. But there
23 is no one at city hall, no one in the
24 government, that would say that -- would be the
25 art -- would be the evaluator of the art of what

1 Lhota

2 can be exhibited or what cannot be exhibited.

3 Q. Well, in the present context,
4 Deputy Mayor Lhota, you've undertaken that role
5 in your affidavit, have you not?

6 A. I have undertaken -- I'm sorry, why
7 don't you repeat the question. Maybe elaborate
8 on it.

9 Q. In the present circumstances, in
10 the Brooklyn Museum case --

11 A. Right. Okay.

12 Q. -- you have in your affidavit
13 reviewed all the works in the exhibit and
14 identified for us what you view to be
15 inappropriate for exhibition at the Brooklyn
16 Museum, in light of their lease, contract and
17 statutory charter; isn't that right?

18 A. That's correct.

19 Q. I'm trying to find out who the
20 Metropolitan Museum of Art in our hypothetical
21 would have to turn to to find out if they would
22 get in trouble for exhibiting a work that is
23 potentially or could be viewed as attacking or
24 desecrating someone's religion. Where do they
25 go?

1 Lhota

2 A. Unfortunately, they go nowhere. I,
3 having worked with the Metropolitan Museum --
4 unfortunately, the hypothetical is one that I
5 have worked very closely with, they are not a
6 museum that would ever intend, violate, or
7 desecrate someone's religion.

8 The fact that the board and the
9 director of the Brooklyn Museum do not see the
10 Virgin Mary as artwork in particular, there are
11 others, but I'll use that in particular, as a
12 violation of their fiduciary responsibility to
13 not desecrate someone's religion in a
14 government-owned building goes to the heart of
15 this issue.

16 There is no one at city hall who on
17 a regular or even ad hoc basis would or could or
18 would even be allowed to evaluate art. It's
19 not -- it doesn't happen, it never will happen.
20 The paragraphs 5 and 6 and 7 that are included
21 in this affidavit are included in this affidavit
22 of mine based on the fact that I believe in a
23 government-owned building you do not have the
24 right to offend someone's religious beliefs.
25 That is why these paragraphs are put in here,

1 Lhota

2 not to criticize art, but to go to what I
3 discussed previously that may have been
4 stricken, that I think there is inherent
5 conflict in our Constitution on this issue.

6 Q. Let's bring it back to the Brooklyn
7 Museum. And you raised the issue of the
8 painting entitled "The Holy Virgin Mary," I
9 believe; is that correct?

10 A. Yes. I did mention that.

11 Q. Your affidavit advises us that in
12 the city's view the display of the painting The
13 Virgin Mary, The Holy Virgin Mary by the
14 Brooklyn Museum was inappropriate under the
15 terms of the lease, the contract, and the
16 statutes that govern the conduct of the Brooklyn
17 Museum; is that correct?

18 A. I'd like to reread paragraph 7.

19 Q. Sure.

20 A. And then I'd like to have the
21 question read back to me.

22 THE WITNESS: Could you read back
23 the question.

24 (Record read.)

25 A. My statement does not state the

1 Lhota

2 very end of your question, violates the lease
3 and the contract.

4 Q. Is it the city's view that the
5 display of The Holy Virgin Mary by the Brooklyn
6 Museum is grounds for ejecting the museum from
7 its building?

8 A. I think that the grounds for
9 ejectment from the building is a failure to
10 follow the statute and the contract and the
11 lease. That's point one.

12 Point two is that I believe, as you
13 made me read before, the purpose of the
14 corporation, section 2 of the statute, is that
15 following that purpose it is not consistent to
16 desecrate someone's religion at this
17 institution.

18 I think you have to look at the
19 issues together and not in any priority order,
20 but I think the failure to comply with the
21 contract and failure to comply with the lease
22 are the grounds for ejectment.

23 Q. And your claim is that the way the
24 museum has failed to comply with its contract
25 and lease is because it has displayed works that

1 Lhota

2 are inappropriate under its corporate purpose;
3 is that correct?

4 THE WITNESS: Could you read -- I'm
5 sorry. Please repeat the question.

6 (Record read.)

7 A. It is partially correct. It is not
8 totally -- it only takes select information in
9 making that statement. The request on the part
10 of the city to remove the painting of the Virgin
11 Mary because of its offense to Christians, Roman
12 Catholics in particular, there were discussions
13 with a member of the board on dealing with that
14 issue, they were denied at the board meeting. I
15 think that was an untrue statement on the part
16 of the board member who made that statement, but
17 there were negotiations to do that.

18 Subsequent to the fact that there
19 was no negotiations going on, I felt necessary
20 to implement the strategy that regards to the
21 forfeiture of the building because there did not
22 appear to be any desire on the part of the
23 board -- there did not appear to be any desire
24 on the part of the board to recognize that the
25 exhibit offended a significant portion of the

1 Lhota

2 population of the city. And I hold to the
3 following: That you cannot use a
4 government-owned building to desecrate someone's
5 religion.

6 Q. My question, Deputy Mayor Lhota, is
7 how does a museum in the future learn whether it
8 is the city's position that any particular work
9 desecrates someone's religion so that they can
10 conduct their behavior accordingly?

11 A. There is no mechanism or way in the
12 future, other than they have to ask
13 themselves -- they, the board, they, the
14 curators, they, the museum, are they desecrating
15 someone's religion or someone's belief,
16 highly-held beliefs, whether they be religious
17 or personal, in viewing that work of art. This
18 is a decision that they must make.

19 This is not something that the
20 government of the City of New York would ever
21 put in some kind of protocol, some kind of plan,
22 some kind of procedure. It's inappropriate for
23 the city to do that.

24 Q. As a matter of fact, there are no
25 procedures in place, are there, for a museum to

1 Lhota

2 go to the city to find out if the city would
3 view a particular work to be inappropriate?

4 A. There are no government procedures.

5 Q. There are no rules to look to, are
6 there?

7 A. I believe there are in the area of
8 common sense, but that would require a whole
9 different discussion. There are no governmental
10 rules or procedures regarding this. It's not
11 the role of government to do it.

12 Q. Are there any governmental
13 regulations?

14 A. There are no governmental
15 regulations.

16 MR. CONNOLLY: Are you referring in
17 addition to the contracts and leases that
18 the government has with these
19 organizations?

20 THE WITNESS: Right.

21 MR. CONNOLLY: In addition to that?

22 MS. BUCKLEY: Right.

23 Q. You're not denying, Deputy Mayor
24 Lhota, that the Brooklyn Museum was told that
25 unless they took the holy Virgin Mary out of the

1 Lhota

2 exhibition their funding would be canceled?

3 A. I can't deny it because I told it
4 to the chairman of the board.

5 Q. You made it quite clear to the
6 Brooklyn Museum that unless they removed this
7 work from the exhibition their funding would be
8 canceled; is that true?

9 A. That's correct. I very
10 specifically not to the museum, but to the
11 chairman of the board.

12 Q. Just so I'm clear, Deputy Mayor
13 Lhota, it's your view that the painting The Holy
14 Virgin Mary can be displayed by a museum, just
15 not by a public museum; is that correct?

16 A. I have stated publicly, and I will
17 state for the record here, that if you want to
18 have a piece of art, any piece of art, that
19 desecrates someone's religion, that you can do
20 it in a privately-owned art gallery, in a
21 privately-owned art museum, in the privacy of
22 your own home. That is my statement.

23 Q. Now, in selecting the exhibits, the
24 artwork exhibits that you've attached to your
25 affidavit, did you consult with anyone else?

1 Lhota

2 A. No.

3 Q. Did you discuss it with the mayor?

4 A. No.

5 Q. In your affidavit, Mr. Lhota, you
6 discuss board meetings of the Brooklyn Museum of
7 Art in June of 1998, that's paragraph 8.

8 A. Uh-huh.

9 Q. And then again in October of 1998
10 that meeting is described in paragraph 9. Do
11 you see that?

12 A. I do.

13 Q. Did you attend either of the
14 meetings of the board of trustees of the
15 Brooklyn Museum of Art --

16 A. I did not.

17 Q. -- in June of 1998 or October of
18 1998?

19 A. I did not attend either of those
20 two meetings.

21 Q. So therefore you have no personal
22 knowledge, do you, of what occurred at those
23 meetings; correct?

24 A. I have no personal knowledge of
25 what happened at those meetings.

1 Lhota

2 Q. And you have no knowledge, do you,
3 of whether the minutes are an actual transcript
4 of the meetings of June '98 and October 1998, do
5 you?

6 A. I have no knowledge of that, that
7 is correct.

8 Q. You have no knowledge what was
9 discussed at either of those meetings, do you?

10 A. I do not, nor does my affidavit
11 make reference that I do, either.

12 Q. Are you familiar with Marcel
13 Duchamp painting Nude Descending A Staircase?

14 A. I am not familiar with it, other
15 than today's Daily News makes reference to a
16 comment made by Mark Green about that artwork.

17 Q. Are you familiar with Monet's
18 classic painting Luncheon On The Grass?

19 A. I believe I am.

20 Q. Could that work appropriately be
21 displayed at the Brooklyn Museum of Art, if it
22 were lucky enough to secure it?

23 A. I'd have to look at the picture,
24 ma'am. I think I know the artwork, but I'm
25 not -- I'm sorry.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Lhota

Q. Deputy Mayor Lhota, have you heard that subway service to the Brooklyn Museum has been disrupted since the beginning of the exhibition?

A. I became aware of that the day following the exhibit opening on October 3rd. And I was personally quite incensed because I thought -- and I read the quotes in the newspaper from the folks at the Transit Authority. So I wanted to make sure that there was no connection between the work that they were doing on those portions of the train.

The fact that I am not on the board of the MTA, but I do -- as one of my capacities as deputy mayor is to maintain relations with the governmental agencies. I subsequently talk to Mark Shaw, the executive director of the MTA, to -- to get information, when was this in process, were signs put up. I don't want this at all attached to anything that's going on between the Brooklyn Museum and the City of New York. How did this happen, what's going on. And my concerns with him.

He satisfied me in that this was

1 Lhota

2 something that had been advertised and going on,
3 that the MTA would be in the process of
4 renovating the stations and all of that stuff.
5 It unfortunately happened to coincide with the
6 early October opening of this museum. There is
7 no connection between the two.

8 I do wish we controlled the Transit
9 Authority. I have gone to Albany constantly in
10 my capacity as budget director, because I don't
11 think the way the Transit Authority works with
12 the City of New York is very appropriate. I'm
13 on the record saying that, it's not relevant
14 here, but I have to get it off my chest.

15 Q. And you were concerned when you
16 heard about the disruption of the subway service
17 because you were fearful that the MTA was
18 somehow reacting to the exhibit, is that it?

19 A. No. It wasn't that they were
20 reacting to the exhibit. It's just that I
21 wanted to make sure that there had been proper
22 notification made over a period of time that is
23 necessary whenever they close down a station,
24 there are certain rules, I don't know what the
25 specific rules are.

1 Lhota

2 We both live in Brooklyn Heights.

3 If you take the Clark Street station, the 2 and
4 the 3, if -- remember years back when they were
5 renovating the elevators, they had to notify,
6 give you a period of time that they would work,
7 you can take an alternate route and all that
8 stuff. I know that there are rules, I wanted to
9 make sure that they followed those rules because
10 I did not want to have actions by the MTA,
11 appropriate or inappropriate, tied to the -- to
12 the legal problems that were going on between
13 the Brooklyn Museum and the City of New York. I
14 wanted to make sure that they were definitely
15 extraneous and not some bright bulb that the
16 Transit Authority thought they were doing
17 something and I didn't know about it.

18 My job as deputy mayor is to know
19 as much about the city operations as possible,
20 and I don't like to read things in newspapers
21 and for the first time hear about it and I
22 believe I did, I believe it was a Sunday
23 morning.

24 Q. As a matter of fact, it would be
25 unlawful for the MTA to disrupt subway service

1 Lhota

2 in reaction to the content of the exhibition,
3 wouldn't it?

4 MR. CONNOLLY: I object to the form
5 of that question.

6 MS. BUCKLEY: Fine.

7 Q. You can answer, Deputy Mayor.

8 MR. CONNOLLY: I'm going to direct
9 that he may not answer the question. It
10 calls for a legal opinion and he's already
11 testified at this deposition that he does
12 not have training, and I think it's an
13 inappropriate question. I direct him not
14 to answer.

15 MS. BUCKLEY: You're only permitted
16 to instruct the witness not to answer on
17 privilege grounds. If you want to raise
18 your objection that it's a legal opinion,
19 the man has given us many legal opinions
20 in his affidavit. You're entitled to.

21 Q. You can answer the question, Deputy
22 Mayor Lhota.

23 A. I don't know what the law is in
24 that area at all.

25 Q. You would agree it would be wrong,

1 Lhota

2 wouldn't you?

3 MR. CONNOLLY: No. Again, I just
4 object for the record.

5 A. Let me restate the question as I
6 know it to be. Would it be wrong for the MTA to
7 take an action to assist the city in its legal
8 action.

9 Q. No. That's not my question.

10 A. Okay. I'm not sure. Why don't you
11 try the question.

12 Q. Would it be wrong for the MTA to
13 disrupt subway service to the Brooklyn Museum
14 because they were angry about the content of the
15 exhibition?

16 A. I think it would be wrong.

17 Q. Would it be wrong for the
18 sanitation department of the City of New York to
19 decline to give service to the museum as it
20 ordinarily gives in response to the content of
21 the exhibition?

22 A. I don't believe the City of New
23 York provides sanitation services. They're
24 dealt with private carters.

25 Q. Assuming the sanitation department

1 Lhota

2 does deal with sanitation services at the
3 Brooklyn Museum, would it be wrong for them to
4 alter their procedures and to deny service in
5 response to the content of the exhibition?

6 A. That's a hypothetical question. It
7 would be illegal for the city to provide that
8 service to the museum, but I will give you the
9 hypothetical. It would be wrong for them to
10 start the service or to alter it without
11 notification.

12 Q. The same would be true of any city
13 agency that provides service to the Brooklyn
14 Museum; isn't that true?

15 A. Not in the case of the funding of
16 the museum. But for any agency that gives
17 services, if they were trying to do something
18 punitive it would be -- it would be -- it would
19 be wrong.

20 MS. BUCKLEY: Off the record.

21 (Discussion off the record.)

22 Q. If you'll turn to your Exhibit 1
23 again, the affidavit, Mr. Lhota, paragraph 15,
24 page 10, you state, "On September 22, 1999, the
25 City first became aware that the 'Sensation'

1 Lhota

2 Exhibition contained such inappropriate works."
3 Specifically, the City became aware of Chris
4 Ofili's, 'The Holy Virgin Mary,' a copy of a
5 photograph which is annexed hereto as Exhibit F,
6 which desecrates Catholicism by incorporating
7 elephant dung into the depiction of the Virgin
8 Mary and displaying cutouts of pornographic
9 genitalia and body parts surrounding the Virgin
10 Mary." My question, Deputy Mayor Lhota, is, who
11 is the city in that context?

12 MR. CONNOLLY: Can I just, for
13 point of clarification, this happens to be
14 the paragraph in which there was a change.

15 MS. BUCKLEY: Okay.

16 MR. CONNOLLY: So I note that.
17 Catholicism was replaced with the word
18 Christianity.

19 MS. BUCKLEY: Okay.

20 MR. CONNOLLY: And there is slight
21 other changes with respect to that. But
22 other than that, everything else is the
23 same. It does not affect this question, I
24 just want to make that clear.

25 Q. By whom are you referring to when

1 Lhota

2 you use the term "the city" in that paragraph?

3 A. In this case I believe it to be the
4 city, meaning the corporate entity, the City of
5 New York, and specifically the mayor of the City
6 of New York and the deputy mayor for operations
7 of the City of New York in its affidavit. I
8 could easily replace that with I first became
9 aware.

10 Q. All right. But in this context
11 you're referring to the mayor, yourself, and the
12 corporate entity of the City of New York?

13 A. Why don't I say no to the corporate
14 entity. I think that's beyond the scope of my
15 knowledge.

16 Q. Okay.

17 A. I think I can easily state that
18 it's the mayor and I.

19 Q. And how did the mayor and you first
20 became aware of Chris Ofili's, quote, The Holy
21 Virgin Mary, unquote?

22 A. I think it was an article in the
23 Daily News.

24 Q. Did you ever have any
25 communications with anyone at the Catholic

1 Lhota

2 League about this work?

3 A. No.

4 Q. Did you ever have any
5 communications with anyone in the art field?

6 A. I would like to answer the first --
7 the previous question. I have not had -- prior
8 to this, had not had any discussions with anyone
9 in the Catholic League.

10 Q. To this, meaning September 22nd?

11 A. To this meaning September 22nd.
12 Subsequent to this day, September 22nd, I did
13 have a discussion with the Catholic League in
14 response to a question that was being asked of
15 me by a reporter.

16 Q. And what was that question?

17 A. The question being asked to me of
18 the reporter was, are you aware that the
19 Catholic League has made the following
20 statement, and I didn't understand the statement
21 so I called their press spokesperson, his name
22 is Willings, Wurlings, something like that, to
23 tell me exactly what it is he had said.

24 Q. Have you had any discussions with
25 people in the museum field about the work The

1 Lhota

2 Holy Virgin Mary?

3 A. No. I have not.

4 Q. Do you know what the term
5 "Maryology" means?

6 MR. CONNOLLY: I'm sorry, what the
7 term what?

8 MS. BUCKLEY: Maryology.

9 A. No. I don't. I'm sorry to
10 hesitate. No, I have never heard that word
11 before.

12 MS. BUCKLEY: We have just been
13 delivered the new, revised copy of Deputy
14 Mayor Lhota's -- is it an affidavit, Dan?

15 MR. CONNOLLY: It's a declaration.

16 MS. BUCKLEY: It is a declaration
17 and I take it that Deputy Mayor Lhota is
18 going to sign it right now?

19 MR. CONNOLLY: Well, this doesn't
20 need to be on the record.

21 MS. BUCKLEY: No. It's on the
22 record.

23 MR. CONNOLLY: They faxed this
24 over. They're also messengering
25 simultaneously over so that he can sign

1 Lhota

2 the original.

3 MS. BUCKLEY: All right.

4 MR. CONNOLLY: Before he leaves I
5 will represent that he will either sign
6 this, the faxed copy, or the original,
7 whichever gets here fastest. What we have
8 in front of us, which we should probably
9 mark as an exhibit, is the final version,
10 a facsimile copy of the final version
11 which will be executed by Deputy Mayor
12 Lhota.

13 MS. BUCKLEY: Okay. Let's mark it
14 as Plaintiff's Exhibit 6.

15 MR. CONNOLLY: I'm going to remove
16 without objection the fax cover page.

17 MS. BUCKLEY: Fine.

18 (Plaintiff's Exhibit 6, facsimile
19 copy of final version of Lhota
20 declaration, marked for identification, as
21 of this date.)

22 Q. Deputy Mayor Lhota, your affidavit
23 sets forth your view that the work The Holy
24 Virgin Mary is offensive to Catholics; is that
25 correct? Is that fair?

1 Lhota

2 A. My statement says, and that's on
3 the corrected page 10 if I can read it, because
4 I want to --

5 MR. CONNOLLY: Paragraph 15.

6 A. I'll read my paragraph.

7 Q. You don't have to read it, Deputy
8 Mayor.

9 A. I say it desecrates Christian
10 religions and particularly the Roman Catholic
11 church. That the change. That's the change I
12 made from last night.

13 Q. Have you conducted a poll of
14 Christians or Catholics to come to this view?

15 A. I have not.

16 Q. This is just your speculation as to
17 what Christians and Catholics would believe
18 about this painting; is that correct?

19 A. That's correct.

20 Q. I want to show you a --

21 MS. BUCKLEY: Let's mark as
22 Plaintiff's Exhibit 7 a page from an art
23 book depicting two works of art, the top
24 one being The Death of Hyacinth.

25 MR. CONNOLLY: For the record, I

1 Lhota

2 just want to, without more information I
3 object to the notion that this comes from
4 an art book.

5 MS. BUCKLEY: All right. The book
6 is really irrelevant but your objection is
7 noted.

8 (Plaintiff's Exhibit 7, page from
9 an art book depicting two works of art,
10 the top one being The Death of Hyacinth,
11 marked for identification, as of this
12 date.)

13 Q. Deputy Mayor Lhota, I'd like to you
14 take a look at Plaintiff's Exhibit 7, the
15 painting which is depicted on the top half of
16 that page, can you read the title of the
17 painting?

18 A. The Death of Hyacinth by Jean Broc,
19 Jean Broc. It's at the Museum of Modern Art in
20 Pointiers, France.

21 Q. Deputy Mayor Lhota, assuming that
22 the Brooklyn Museum of Art were able to secure
23 this work to exhibit at the museum, would it be
24 inappropriate for the museum to do so under its
25 lease, contract, and charter as we discussed

1 Lhota

2 earlier today?

3 A. I believe not.

4 Q. Why?

5 A. It's a representation of what
6 appears to me to be an angel holding on to
7 someone. The title helps me believe that the
8 someone that the angel is holding on to is dead.
9 It's called The Death of Hyacinth, I presume
10 that is Hyacinth and it's just a rendering of
11 taking one's physical body to heaven.

12 Q. And in your view, Deputy Mayor
13 Lhota, would that be an acceptable work to show
14 your daughter?

15 A. It would not be.

16 Q. Have you had any conversations with
17 Mr. Geller about the Sensation exhibit?

18 A. I have not had conversations with
19 Mr. Geller about the Sensation exhibit.

20 Q. Have you had any conversations with
21 Mr. Geller about his attendance at board
22 meetings of the Brooklyn Museum?

23 A. I had a conversation with
24 Mr. Geller in which I asked him why he did not
25 attend the board meeting wherein he said --

1 Lhota

2 as -- he said exactly what was said in one of
3 the newspapers recently, that he was preoccupied
4 with other things. And I informed him that that
5 was unfortunate that he did not attend those
6 board meetings.

7 Q. I'm handing you a copy of a book
8 entitled American Impressions, Deputy Mayor
9 Lhota, and I have turned it to a page containing
10 footnotes 64 and 65. And I will give copies of
11 this page to counsel for the City of New York.
12 I just want you to take a look at the work
13 that's depicted here entitled Nude Print by Tom
14 Wesselman.

15 A. Uh-huh.

16 Q. It's the same question I asked
17 about the Death of Hyacinth, Deputy Mayor Lhota.
18 Is it your view that given its lease, its
19 contract, and its statutory obligations, it
20 would be appropriate for the Brooklyn Museum of
21 Art to display this work if it was able to
22 secure it?

23 A. Yes.

24 Q. Why?

25 A. It's a picture of a woman, appears

Lhota

1
2 to be lying down -- picture of a woman lying
3 down, no eyes painted in, cigarette lit next to
4 her, she's topless.

5 Q. Not a problem with that?

6 A. I have no problem with that.

7 MS. BUCKLEY: We're going to mark
8 this as Plaintiffs' Exhibit 8 and we will
9 make copies so that we don't ruin the book
10 after the deputy mayor has to leave. I
11 understand that the affidavit has arrived?

12 MR. CONNOLLY: Has arrived.

13 MS. BUCKLEY: Perhaps we can have
14 the mayor sign it.

15 MR. CONNOLLY: Just so it's clear,
16 it is a declaration.

17 MS. BUCKLEY: I'm sorry, it is a
18 declaration.

19 MR. CONNOLLY: The record should
20 reflect that Deputy Mayor Lhota is now
21 signing it.

22 Q. You understand, Deputy Mayor Lhota,
23 that in signing that declaration that you are
24 swearing that it is true under penalties of
25 perjury; is that correct?

1 Lhota

2 A. Absolutely.

3 MS. BUCKLEY: As promised, I have
4 to let you go, Deputy Mayor Lhota, because
5 I understand you're traveling today. I
6 cannot say that this deposition is
7 completed, but we will suspend it and
8 recommence at another time as may be
9 agreed between the parties or ordered by
10 the Court. Thank you for coming.

11 (Plaintiff's Exhibit 8, copy of
12 print out of book entitled American
13 Impressions, Nude Print by Tom Wesselman,
14 marked for identification, as of this
15 date.)

16 (Time noted: 12:30 p.m.)

17 _____
18 JOSEPH J. LHOTA

19 Subscribed and sworn to before me

20 this _____ day of _____, 199__.

21 _____

22 (Notary Public)

My Commission Expires:

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

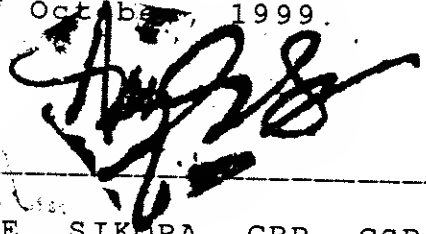
STATE OF NEW YORK)
 : ss
COUNTY OF NEW YORK)

I, AMY E. SIKORA, CRR, CSR, RPR, a
Certified Realtime Reporter, Certified Shorthand
Reporter, Registered Professional Reporter and
Notary Public within and for the State of New York,
do hereby certify that the foregoing deposition
of JOSEPH J. LHOTA was taken before me on
the 7th day of October, 1999;

That the said witness was duly sworn
before the commencement of the testimony;
that the said testimony was taken stenographically
by me and then transcribed.

I further certify that I am not related
by blood or marriage to any of the parties to this
action nor interested directly or indirectly in the
matter in controversy; nor am I in the employ of any
of the counsel in this action.

IN WITNESS WHEREOF, I have hereunto set
my hand this 7th day of October, 1999.



AMY E. SIKORA, CRR, CSR, RPR

1

2 October 7 1999

3

I N D E X

4 WITNESS

EXAMINATION BY

PAGE

5 Joseph J. Lhota

Ms. Buckley

5

6

7

E X H I B I T S

8 PLAINTIFF

FOR I.D.

9

1

Lhota affidavit

13

10

2

copy of stipulation in this action,
dated October 4, 1999

17

11

12

3

copy of Chapter 172 of the laws
of 1890

24

13

14

4

complaint in the state court action
by the city against the Brooklyn
Museum of Art

42

16

17

5

copy of catalog entitled Young
British Artists From the Saatchi

18

19

Collection, Sensation

58

20

6

facsimile copy of final version of
Lhota declaration

85

21

22

7

page from an art book depicting two
works of art, the top one being The
Death of Hyacinth

87

23

24

25

1

2 (Continued)

3

E X H I B I T S

4 PLAINTIFF

FOR I.D.

5

8

copy of print out of book entitled
American Impressions, Nude Print by
Tom Wesselman

91

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

